

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Transportation Committee

BILL: CS/SB 856

INTRODUCER: Transportation Committee and Senator Bennett

SUBJECT: Coastal Management

DATE: April 15, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	Favorable
2.	Pugh	Cooper	CM	Favorable
3.	Eichin	Meyer	TR	Fav/CS
4.			TA	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Section 380.06, F.S., provides for state and regional review of local land-use decisions regarding Developments of Regional Impact (DRI), *i.e.*, large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county. Currently, s. 163.3178, F.S., exempts from Development of Regional Impact (DRI) review certain improvement projects at Florida's 14 public deep-water ports; port-related projects eligible for state funding under s. 311.07(3)(b), F.S.; and intermodal projects listed in the state's Seaport Mission Plan. Similarly, s. 380.06 (2), F.S., provides a number of land uses exemptions from the DRI review process provided the land use is not part of a larger project subject to review.

CS/SB 856 adds to the list of exempted activities in s. 163.3178, F.S., certain port-related commercial or industrial projects located in, or within 3 miles of, a port master plan area and which rely upon the use of port and intermodal transportation facilities. The bill also clarifies projects exempted from DRI review by s. 380.06, F.S., remain exempted regardless of whether they are part of a larger DRI, if the exempted land use receives an Innovation Incentive Program grant of at least \$50 million from the Office of Tourism, Trade, and Economic Development (OTTED.)

This bill amends ss. 163.3178 and 380.06, of the Florida Statutes.

II. Present Situation:

The Development-of-Regional-Impact (DRI) Process

Section 380.06, F.S., provides state and regional review of local land-use decisions regarding large developments that, because of their character, magnitude, or location, would have a substantial effect on the health, safety, or welfare of the citizens of more than one county.¹ Regional planning councils assist the developer by coordinating multi-agency DRI review. The council's job is to assess the DRI project, incorporate input from various agencies, gather additional information and make recommendations on how the project should proceed. The Department of Community Affairs (DCA) reviews DRIs for compliance with state law and identifies the regional and state impacts of large-scale developments. The DCA makes recommendations to local governments for approving, suggesting mitigation conditions, or not approving proposed developments.

Comprehensive Planning and Coastal Management

The Local Government Comprehensive Planning and Land Development Regulation Act, contained in ss. 163.3161-163.3246, F.S., establishes a growth management system in Florida requiring each local government (or combination of local governments) to adopt a comprehensive land-use plan. The local government comprehensive plan is intended to be the policy document guiding local governments in their land-use decision-making.

Section 163.3177, F.S., requires each comprehensive plan to include certain "elements" addressing different aspects of growth management, including the following: capital improvements; a future land-use plan; traffic circulation; general sanitary sewer, solid waste, drainage, potable water, and natural groundwater aquifer recharge; conservation; recreation and open space; and intergovernmental coordination elements.

Local governments in coastal areas of the state also are required to include a "coastal management element."² The coastal management element must include policies to guide the local government's decisions and implementation of the following objectives:

- Maintenance, restoration, and enhancement of the overall quality of the coastal zone environment, including, but not limited to, its amenities and aesthetic values.
- Continued existence of viable populations of all species of wildlife and marine life.
- The orderly and balanced utilization and preservation, consistent with sound conservation principles, of all living and nonliving coastal zone resources.
- Avoidance of irreversible and irretrievable loss of coastal zone resources.
- Ecological planning principles and assumptions to be used in the determination of suitability and extent of permitted development.
- Proposed management and regulatory techniques.
- Limitation of public expenditures subsidizing development in high-hazard coastal areas.

¹ Section 380.06(1), F.S.

² Section 163.3177(6)(g), F.S.

- Protection of human life against the effects of natural disasters.
- The orderly development, maintenance, and use of the 14 deep-water ports identified in s. 403.021(9), F.S., to facilitate deepwater commercial navigation and other related activities.
- Preservation, including sensitive adaptive use of historic and archaeological resources.³

In addition, the coastal management element must outline principles to be used in eliminating inappropriate and unsafe development in coastal areas as the opportunity arises.⁴ Further, it must identify public access to beach and shoreline areas and address the need for water-dependent and water-related facilities.⁵ This element must identify regulatory and management techniques a local government will use in order to mitigate the threat to human life and to control proposed development and redevelopment in order to protect the coastal environment, considering impacts cumulatively.⁶ A coastal local government also is required to include, in its coastal element, the designation of “high-hazard coastal areas,” which consist of category 1 evacuation zones.⁷ Under current growth management law, local governments are restricted from allowing development in these areas increasing the density or intensity of the current land use.

Subsection (3) of s. 163.3178, F.S., removes from the DRI process certain port-related projects which are otherwise consistent with a port master plan. A port master plan must be included in the coastal management element of the comprehensive plan for a local government having responsibility for the port area. A deepwater port not submitting its master plan to the local government having responsibility for the area and not a part of the local government is subject to sanctions under s. 163.3184, F.S. The port master plan should address the issues listed in s. 163.3178(2), F.S., for coastal management element.

Florida’s seaports

Section 403.021(9), F.S., lists Florida’s 14 publicly owned, deepwater ports:

Jacksonville	Port Manatee
Tampa	Port St. Joe
Port Everglades	Panama City
Miami	St. Petersburg
Port Canaveral	Pensacola
Ft. Pierce	Fernandina
Palm Beach	Key West

All ports routinely need some type of dredging or facility improvement. Assisting the ports and their tenants is the Florida Seaport Transportation and Economic Development (FSTED) Council, a public entity created in 1990 under s. 311.09, F.S. Administratively housed within the Florida Department of Transportation (DOT), the council consists of the port directors of the 14 seaports and a representative from each of the following state agencies: DOT, DCA, and the Governor’s Office of Tourism, Trade and Economic Development.

³ Section 163.3177(6)(g)1.-10., F.S.

⁴ Section 163.3178(2)(f), F.S.

⁵ Section 163.3178(2)(g), F.S.

⁶ Section 163.3178(2)(j), F.S.

⁷ Section 163.3178(2)(h), F.S.

Among the FSTED Council's responsibilities is ensuring consistency with local comprehensive plans, ensuring seaport investments are initiated at the local level and driven by a local commitment to meet the seaport's strategic objectives. The FSTED Council also must develop a 5-year Seaport Mission Plan consistent with DOT's 5-Year Work Program.

Projects eligible for funding by grants under the FSTED program are exempt from DRI review under s. 163.3178, F.S., and are limited to the following port facilities or port transportation projects:⁸

- Transportation facilities within the jurisdiction of the port.
- The dredging or deepening of channels, turning basins, or harbors.
- The construction or rehabilitation of wharves, docks, structures, jetties, piers, storage facilities, cruise terminals, automated people mover systems, or any facilities necessary or useful in connection with any of the foregoing.
- The acquisition of vessel tracking systems, container cranes, or other mechanized equipment used in the movement of cargo or passengers in international commerce.
- The acquisition of land to be used for port purposes.
- The acquisition, improvement, enlargement, or extension of existing port facilities.
- Environmental protection projects which:
 - are necessary because of requirements imposed by a state, federal, or local governmental entity;
 - are necessary for the acquisition of spoil disposal sites and improvements to existing and future spoil sites; or
 - result from the funding of other eligible projects.
- Transportation facilities as defined in s. 334.03(31) which are not otherwise part of the DOT adopted work program.⁹
- Seaport intermodal access projects identified in the 5-year Florida Seaport Mission Plan.
- Construction or rehabilitation of port facilities as defined in s. 315.02, F.S.,¹⁰ excluding any park or recreational facilities, in ports with operating revenues of \$5 million or less, provided such projects create economic development opportunities, capital improvements, and positive financial returns to such ports.

Florida's ports are a significant economic generator for the state and the communities in which they are located. In 2007, the ports handled \$73.4 billion in cargo: \$40.4 billion in imports and

⁸ s. 311.07(3)(b), F.S.

⁹ Under s. 334.03(31), F.S., "Transportation facility" means any means for the transportation of people or property from place to place which is constructed, operated, or maintained in whole or in part from public funds. The term includes the property or property rights, both real and personal, which have been or may be established by public bodies for the transportation of people or property from place to place.

¹⁰ Including channels, turning basins, jetties, breakwaters, public landings, wharves, docks, markets, parks, recreational facilities, structures, buildings, piers, storage facilities, including facilities that may be used for warehouse, storage, and distribution of cargo transported or to be transported through an airport or port facility, security measures identified pursuant to s. 311.12, public buildings and plazas, anchorages, utilities, bridges, tunnels, roads, causeways, and any and all property and facilities necessary or useful in connection with the foregoing, and any one or more or any combination thereof and any extension, addition, betterment, or improvement of any thereof

\$33 billion in exports.¹¹ Additionally, more than 14.2 million passengers embarked on cruises from Florida ports in FY 2005-2006.¹² By 2008, Florida's ports were expected to generate an annual gross economic output of \$42.8 billion; add \$19.9 billion to Florida's gross state product; and support 348,290 jobs.¹³

S. 288.1089, F.S., The Innovation Incentive Program

The Innovation Incentive Program, created under s. 288.1089, F.S., in 2006, "to allow the state to respond expeditiously to extraordinary economic opportunities and to compete effectively for high-value research and development and innovation business projects." Under the program, certain innovation businesses, research and development entities, or alternative and renewable energy projects may receive state resources. Since its inception, the program has awarded a number of grants, all to research and development entities.

III. Effect of Proposed Changes:

Section 1 amends s. 163.3178 (3), F.S., to include port-related industrial or commercial projects, as determined by the DCA and the applicable general-purpose local government, in the types of projects which are not considered DRIs if they are located in, or within 3 miles of, a port master plan area and rely upon the utilization of port and intermodal transportation facilities.

Section 2 amends s. 380.06 (24), F.S., to clarify projects exempted from DRI review by the section remain exempted regardless of whether they are part of a larger DRI, if the exempted land use receives an Innovation Incentive Program grant of at least \$50 million under the Innovation Incentive Program created in s. 288.1089, F.S.

Section 3 provides this act shall take effect July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹¹ See http://www.flaports.org/archive/2008_section4.pdf, Page 19. Last visited March 25, 2009.

¹² Ibid. Page 28.

¹³ See <http://floridaports.org/docs/seaportsvisioning10506jdsrevision%20power%20point%20to%20ports.pdf>.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Port-related industrial or commercial projects located in, or within 3 miles of, a port master plan area and certain Innovation Incentive Program grant recipients may proceed more rapidly and with less government oversight.

C. Government Sector Impact:

Regional planning councils may become less involved in review of port-related industrial or commercial projects, and in the review of certain projects related to the Innovation Incentive Program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Transportation on April 14, 2009:

The CS added the language found in Section 2 of the bill, clarifying projects exempted from DRI review by s. 380.06, F.S., remain exempted regardless of whether they are part of a larger DRI, if the exempted land use receives an Innovation Incentive Program grant of at least \$50 million from OTTED.

B. Amendments:

None.